

response. The Declaration provides evidence demonstrating that the presently claimed invention was made prior to May 3, 1995, the priority date of U.S. Pat. No. 5,877,159. Reconsideration and withdrawal of the rejection is respectfully requested.

The Examiner indicated that the Declaration was insufficient to overcome the Powell et al. reference because Powell et al. allegedly claims the same invention. Applicants respectfully disagree.

35 USC §102(e), under which the rejection was made, states "the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent..." (emphasis added). The Office Action issued July 19, 1999 did not indicate that the '159 patent claimed the same invention, and the outstanding Office Action does not indicate which claim or claims of the '159 patent claim the same invention as pending claims 45-55 of the present application.

It is respectfully submitted that the '159 patent does not, in fact, claim the same invention as the presently pending application, although certain aspects of the invention may be disclosed in the '159 patent. The Declaration filed on January 19, 2000, clearly establishes that the present invention was made prior to the priority date of the '159

patent. Consideration of the Declaration and withdrawal of the rejection are respectfully requested.

If the Examiner maintains the position that the '159 patent claims the same invention, she is requested to provide specific details as to which claims are considered to correspond.

If any issues remain in the application which might be resolved by telephone conference, the Examiner is invited to contact the undersigned.

Respectfully submitted,

PILLSBURY MADISON & SUTRO, L.L.P.

By: C. A. Hobbs  
Ann S. Hobbs, Ph.D.  
Reg. No. 36,830  
Tel: (202) 861-3063

1100 New York Avenue  
East Tower, Ninth Floor  
Washington, D.C. 20005